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Committee on Enforced Disappearances

Tenth session

Summary record of the 162nd meeting

Held at the Palais des Nations, Geneva, on Wednesday, 9 March 2016, at 3 p.m.

Chair: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Kazakhstan (CED/C/KAZ/1; CED/C/KAZ/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Kazakhstan took places at the Committee table.*

2. **Mr. Zhakupov** (Kazakhstan), introducing the initial report of Kazakhstan (CED/C/KAZ/1), said that his Government had carried out a number of important legal reforms in recent years that had demonstrated its commitment to democracy and human rights. It had mobilized considerable resources for efforts to combat violations of those rights, not least of all enforced disappearance and unlawful deprivation of liberty.

3. An independent and effective judiciary had been established in the country, and citizens' rights had been further protected with the introduction of jury trials and specialized courts. Stricter eligibility requirements for judicial appointments had been imposed and the selection process had been made more transparent. Judges were now chosen by the Higher Judicial Council, which was made up of members of the Parliament, experienced judges and political officials; and Supreme Court judges were appointed by the Senate, the upper house of the Parliament. On 1 January 2015, a new Criminal Code, Code of Criminal Procedure and Penal Enforcement Code had entered into force and other steps had been taken to ensure that citizens' rights and freedoms were fully safeguarded.

4. Greater judicial control over criminal proceedings had been established. All crimes reported to the law enforcement authorities, including reports of disappearances of persons, were promptly investigated, whereas, previously, a preliminary inquiry had been required before such investigations could be launched. The adversarial principle had been introduced in court hearings and reasonable doubt had been established as a standard of evidence. Furthermore, the role of lawyers had been enhanced and a wider range of people were now eligible for free legal assistance.

5. In accordance with the International Covenant on Civil and Political Rights and within the framework of the recently adopted reforms, most investigative action, including remand in custody, required authorization from the courts. As a result, the number of persons held in custody, in particular minors, had decreased dramatically; alternative preventive measures had been used instead, such as release on bail and house arrest.

6. The Government was implementing a programme to modernize the law enforcement system with a view to bringing it into line with the highest international standards. All reforms currently under way were aimed at getting the public to view law enforcement agencies as a social partner and as a service rather than as a criminal prosecution authority.

7. Alleged offenders could be detained by authorized officials for a period of up to 72 hours and only on grounds provided for by law; they must also be read their rights and obligations. Under the law, members of the family of the detainee must be informed of his or her detention. In cases of detention of foreign nationals, the relevant consulates were immediately notified. When persons were sentenced to prison, family members must be informed of the location of the place of detention. The failure or refusal to do so was subject to criminal penalties.

8. The Office of the Procurator General and the courts had responsibility for protecting the rights and freedoms of persons being held in detention. Special units were established in places of detention to conduct internal investigations of allegations of abuse by officials. Under the Law Enforcement Service Act, officials who were instructed to carry out an order that they knew to be unlawful were obliged to comply with the law and they were protected by the law. When officials committed gross violations of the Constitution, their

superior officer was subject to dismissal. The responsibilities of superior officers were in line with the relevant provisions of the International Convention for the Protection of All Persons from Enforced Disappearance.

9. The offences referred to in article 3 of the Convention were covered under article 125 (Abduction), article 126 (Unlawful deprivation of liberty) and article 128 (Human trafficking) of the Criminal Code. Under the Code, abduction was defined as deliberate wrongful acts aimed at seizing and removing persons from their social setting or place of residence and detaining them against their will at another location. Unlawful deprivation of liberty meant depriving persons of the opportunity to move about in unenclosed areas of their own free will, locking them indoors, tying them up or forcibly detaining them.

10. Every three years, the Government prepared, with input from international and non-governmental organizations, an action plan to combat human trafficking. A new plan had been drafted in 2015, which took full account of the recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences.

11. Measures had been stipulated by law for the rehabilitation of victims of enforced disappearance and for reparation for damages caused to them as a result of unlawful acts by officials. The details of such reparation were set out in the initial report and in the written replies to the list of issues (CED/C/KAZ/Q/1/Add.1).

12. Searches for disappeared persons were conducted by the internal affairs agencies in the manner prescribed by law, including searches involving assistance from the competent authorities of foreign States under international agreements and through the International Criminal Police Organization (INTERPOL).

13. Legislative measures had been adopted to prevent the unlawful committal of persons to psychiatric facilities. Under the law, a person could be forcibly institutionalized in such facilities only by a court decision. Thus, the fact that there were such standards in the domestic legislation ensured the principle of inevitability of punishment for anyone carrying out a crime related to enforced disappearance.

14. The Human Rights Commission, which was attached to the Office of the President, played an active role in protecting the constitutional rights of citizens. The post of Commissioner for Children's Rights had been established in February 2016 by presidential decree. In 2013, a national preventive mechanism had been set up for the prevention of torture. Both the Office of the Human Rights Commissioner and the national preventive mechanism enjoyed full independence from all branches of government, and wrongful interference in their activities was prohibited by law.

15. The Government was engaged in constructive dialogue with all human rights NGOs through the local boards that had been established within every law enforcement body. The boards had the right to make unimpeded visits to special facilities, conduct interviews with prisoners and receive appeals and complaints from prisoners concerning violations of their rights and legitimate interests. Crisis centres had been set up throughout the country to provide victims of human rights violations with free legal assistance and social, medical and psychological services.

16. Kazakhstan had embarked on a process intended to strengthen the rule of law and protect the rights and freedoms of all. The Government took into careful consideration all proposals from its international partners and was grateful for their views. It had set itself ambitious goals and had every confidence that it would achieve them.

17. **Mr. Hazan** (Country Rapporteur) said that he was pleased to see such a high-level delegation with so many specializations and he welcomed the reforms to the legal system that had just been described. Referring to paragraph 3 of the replies to the list of issues, he said that the delegation should be more specific about the reasons why the Government did

not recognize the Committee's competence to receive and consider communications. He wished to know whether the delegation could provide further statistical data on or examples of the sentences imposed for the offences mentioned in paragraph 19 of the replies. Reference had been made to some 3,000 persons who had gone missing for whom a search had been put out. The delegation should indicate whether a register of such persons was kept, even though there had been no suspicion of involvement by public officials in those cases. He would also appreciate further information on the resources made available to the Human Rights Commissioner to enable him to fulfil his mandate.

18. **Mr. Yukushiji** (Country Rapporteur) said that it would be helpful to have detailed information on the national laws that were aimed at preventing enforced disappearance in emergency situations. Referring to paragraph 15 of the written replies, he wondered whether the right not to be subjected to enforced disappearance under article 1 of the Convention was specifically recognized as a non-derogable right under national law and what specific non-derogable rights were covered in emergencies.

19. Turning to paragraph 19 of the replies, he asked whether there had been any cases in which the death penalty had been imposed. He also wished to know whether the death penalty had been abolished when the Criminal Code had been amended. The delegation should clarify why it considered that there was no need to make enforced disappearance a separate offence under national law, especially as the absence of such an offence made it difficult to collect data, or even general information, on enforced disappearance. He would be grateful if the delegation would also provide examples, if any, in which article 6 (1) (b) of the Convention had been applied to superior officers who had been aware of wrongdoing by their subordinates and had failed to take action. It was not clear whether the responsibility incurred by superiors for crimes committed by their subordinates entailed administrative or criminal responsibility under the Law Enforcement Service Act and whether the Act was applicable to the security and armed forces.

20. He asked whether crimes against humanity constituted an offence under the State party's criminal law and, if not, whether the State party intended to make them a specific offence in the near future. He wondered whether the new Criminal Code continued to penalize criminally punishable acts as had been described in paragraph 33 of the State party's initial report. Did the penalties provided for in the Criminal Code ensure that the State party fulfilled its obligation under article 7 (1) of the Convention to make the offence of enforced disappearance punishable by penalties that took into account its extreme seriousness?

21. He said that he would appreciate an explanation of the ambiguous provisions of the previous Criminal Code, under which the commission of an offence under physical or psychological duress, on account of dependency or while carrying out an order or instruction during a police inquiry was deemed a circumstance that mitigated criminal responsibility. He wondered whether those provisions had been carried over into the new Criminal Code. It would also be interesting to know how the State party applied the provision which suggested that illegal or amoral behaviour by a victim was a mitigating circumstance and whether an accused person's decision to help bring a disappeared person forward alive or otherwise clarify cases of enforced disappearance would be interpreted as a mitigating circumstance. Lastly, he asked whether military personnel and members of the security forces were covered by the provision stating that the commission of an offence by a law enforcement officer or judge in abuse of his or her authority was an aggravating circumstance.

22. **Mr. Hazan** said that he wished to know whether any offences were considered continuous offences under the State party's criminal laws. He wondered how the term of limitation was calculated for crimes involving deprivation of liberty for an ongoing period of time.

23. He wished to know whether military courts were ever prohibited from trying cases of serious human rights violations. He asked for clarification of paragraph 39 of the replies to the list of issues, which seemed to suggest that cases of enforced disappearance involving military personnel would be handled by military jurisdictions. Had the country's military courts ever tried cases involving abduction, unlawful deprivation of liberty or trafficking in persons?

24. He said that he would welcome more information about the units of the Ministry of Internal Affairs that had been set up to combat crimes associated with trafficking in persons. It would be interesting to know why those units had been set up in the two cities of Astana and Almaty and what specific cases they had been involved in. Information on any other investigative units, including forensic services, that could help the State party to fulfil its obligation to conduct a thorough and impartial investigation of allegations of enforced disappearance would be welcome, as would an explanation of the work of the special procurators referred to in paragraph 64 of the State party's initial report.

25. He asked how enforced disappearance, torture and other serious human rights violations were investigated, especially in view of the State party's assertion that there was no mechanism for relieving the security forces or law enforcement agencies of responsibility for the investigation when their members were accused of such crimes. He also asked whether allegations of torture and ill-treatment made against law enforcement officials were commonly dealt with administratively rather than by the criminal courts and, if so, whether the delegation could provide information on the outcome of those administrative proceedings.

26. It would be interesting to know whether Kazakhstan could refuse a request for the extradition of a person accused of enforced disappearance on the grounds that enforced disappearance was not an autonomous offence in Kazakh law. In the same connection, he asked how Kazakhstan reconciled its refusal to extradite its citizens to States with which it had not entered into an extradition treaty with its obligations under article 9 (1) (b) of the Convention, read in conjunction with article 7 (1). Conversely, he wished to know whether foreign nationals present in Kazakhstan but accused of committing an enforced disappearance in another State were subject to prosecution in the Kazakh courts. He also asked whether there was any legislation prohibiting the extradition of a person when there was reason to believe that the person would be subjected to ill-treatment or enforced disappearance. Did the legal cooperation agreements listed in the State party's initial report incorporate any of the provisions of articles 13 to 15 of the Convention?

27. **Ms. Janina** said that she wished to know what arguments had led the Kazakh authorities to their position that there was no need to take any measures to ensure that enforced disappearance constituted a separate offence under the State party's criminal law. She also wished to know whether laws addressing such offences as abduction were an adequate substitute. It would be interesting to know whether Kazakhstan had recognized the competence of other treaty bodies to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation of provisions of the international human rights treaties to which it was a party.

The meeting was suspended at 3.50 p.m. and resumed at 4.20 p.m.

28. **Mr. Zhakupov** (Kazakhstan) said that his country had recognized the competence of a number of other treaty bodies to receive and consider communications from or on behalf of individuals. A proposal to make a declaration recognizing similar competence of the Committee on Enforced Disappearances was currently being considered. He was hopeful that a decision would be made shortly.

29. Article 400 of the new Criminal Code, which had entered into force in early 2015, addressed the arrest, detention, abduction or any other form of deprivation of liberty by

agents of the State or by persons or groups of persons acting in representation of the State. The provisions of article 2 of the Convention, as a whole, had thus been incorporated into the Criminal Code. Criminal penalties had also been established for the acts described in article 3 of the Convention. The Government was therefore of the view that enforced disappearance, as defined in the Convention, was criminalized in Kazakhstan.

30. **Mr. Abishev** (Kazakhstan) said that the Kazakh Human Rights Commission was a consultative body that included representatives of civil society. The Commissioner, also referred to as the Ombudsman, was fully independent. His office was entitled to request information from any public official, and in 2013 it had been made responsible for the national mechanism for the prevention of torture. The Ombudsman's reports were published, and the State was required to implement his recommendations. The status and activities of his office were guided largely by the Paris Principles, and although discussions on strengthening the status of the Ombudsman were still under way, his office worked effectively to defend the rights of all persons subject to Kazakh jurisdiction.

31. **Mr. Aripov** (Kazakhstan) said that in Kazakhstan the administration of justice was the responsibility of the courts alone and that they could not be relieved of that responsibility. The concept of military jurisdiction did not exist. Military courts were simply part of the country's judicial system.

32. In the new Criminal Code, a victim's illegal or amoral behaviour was still considered a circumstance that could potentially mitigate responsibility for a crime targeting the victim, whereas the abuse of authority by law enforcement officials in the commission of a crime was considered an aggravating circumstance. The President had recently announced a moratorium on the death penalty.

33. **Mr. Zhakupov** (Kazakhstan) said that although the commission of an offence under physical or psychological duress or on account of dependency mitigated criminal responsibility for that offence, the Law Enforcement Service Act stated that unlawful orders were not to be obeyed and that no law enforcement official would be held responsible for any failure to obey such an order.

34. **Mr. Dossanov** (Kazakhstan) said that basic procedural safeguards could be limited only in the event of threats to the country's existence or declared national emergencies. They could not be limited for political reasons, and in no case did such limitations provide for the possibility of enforced disappearance or unlawful deprivation of liberty.

35. The table in paragraph 22 of the initial report provided information on cases brought to court concerning abduction (art. 125 of the Criminal Code), unlawful deprivation of liberty (art. 126) and trafficking in persons (art. 128). No cases of enforced disappearance as defined in article 2 of the Convention had been identified.

36. Without a court order, an individual could be detained for no more than 72 hours, and all persons taken into custody were read their rights. The family of a detained minor was to be notified of the detention without delay.

37. Whenever a non-national was detained, the Ministry of Foreign Affairs was required to notify the relevant embassy or consulate, or another representative body of the State in question, within 24 hours.

38. Pursuant to various articles of the Criminal Code, superior officers could be held criminally liable for their own acts and for those of subordinates acting on their instructions. Specific situations covered by individual articles included abuse of authority, exceeding official powers, dereliction of duty, nonfeasance, concealing an offence, failure to report an offence and deliberate, unlawful detention or placement or maintenance of a person in custody. Article 28 of the Code defined the various participants in an offence — perpetrators, organizers, instigators and accessories — to whom criminal liability could be

attributed. The Law Enforcement Service Act expressly stipulated that officials were obliged to comply with the law and benefited from its protection should they receive an unlawful order or instruction. By the same token, officials who executed orders that ran counter to the law and caused harm or injury to others were criminally liable for their actions. The law also provided for the temporary suspension and dismissal of officers implicated in violations of constitutional rights.

39. The circumstances in which judges or prosecutors might decide to dismiss legal proceedings and release a person from criminal liability were defined in the Code of Criminal Procedure. The statute of limitation applicable to cases of enforced disappearance was in line with the relevant provisions of the Criminal Code. The limitation period began on the date on which the criminal activity commenced, was suspended if the person was released by the court and did not apply to especially serious offences, such as acts of terrorism, extremism and other crimes against peace, safety, constitutional order and State security.

40. Whenever an unidentified body was found, the case was referred to the investigating authorities for expert forensic analysis. If the first analysis was inconclusive, a second analysis was performed under the supervision of the Ministry of Justice.

41. **Ms. Aisina** (Kazakhstan) said that the role of special procurators was defined in the Code of Criminal Procedure and entailed the oversight of pretrial investigative proceedings and all stages of trial proceedings. Special procurators were independent and subject only to the law. Offences referred to a special procurator were typically crimes committed by law enforcement agents, such as torture, in respect of which a lack of objectivity might otherwise impede due process of law. In 2015, more than 130 cases, many of which had involved law enforcement agents, had been overseen by special procurators. A total of 15 law enforcement agents had been convicted in those cases.

42. As from the date of ratification, the Government of Kazakhstan had committed to respecting all provisions of the Convention, including those of article 16, which protected persons against extradition to another State when there were grounds to believe they might be subjected to enforced disappearance if returned. Extradition was not authorized in such circumstances, pursuant to the relevant articles of the Criminal Code. Extradition was expressly prohibited in cases where a person's life or freedom was threatened due to his or her religion, nationality, ethnic origin or membership of a particular social group and where extradition was prohibited under international treaties ratified by Kazakhstan, which took precedence over national law.

43. The criteria used to assess the risk that a person might face if extradited were detailed in the new criminal legislation. A number of additional conditions and checks had been introduced in order to ensure that all requests were given careful, in-depth consideration and civil rights were not violated. In application of the new provisions, the authorities were given a maximum of 12 months to examine and verify the supporting materials submitted by the requesting State, the related immigration policies and the statements of the person whose extradition had been requested. The requested person could be detained for no longer than that 12-month period. If the person was ultimately denied refugee status or asylum, the decision could be appealed before the Supreme Court.

44. Diplomatic assurances were not accepted without verification. The Government also examined alternative sources, including any recommendations issued to the State in question by United Nations treaty bodies and any relevant reports issued by United Nations special rapporteurs. If there was any reason to believe that the person requested could face torture or enforced disappearance if returned, the extradition request was not granted even if assurances had been given. In a recent case, the Procurator General's Office had refused to surrender an Uzbek citizen who had taken part in an uprising on the grounds that the

person could be subjected to torture and possibly enforced disappearance if returned to Uzbekistan. The person in question had subsequently been released.

45. **Mr. Kakhanov** (Kazakhstan) said that incidents of unlawful deprivation of liberty linked to trafficking in human beings were investigated by dedicated units of the criminal police established in various regions and cities. Since the ratification of the Convention, just over 400 people had been found guilty of abduction. A somewhat smaller number had been convicted of human trafficking.

46. **Mr. Kayrnekov** (Kazakhstan) said that, in accordance with national law, all complaints of torture or ill-treatment at the hands of State officials were referred to a special procurator in order to ensure a full and impartial investigation. However, there had been no such investigations in the past few years.

47. **Mr. Zhakupov** (Kazakhstan) said that criminal offences were classified according to their severity in a specific article of the Criminal Code that also established maximum sentences for offences in each category, based on the threat they posed for society. Accessories to offences in each category were subject to the same penalties as the perpetrators. In line with the requirements of the Convention, offences of enforced disappearance were not regarded as political or politically motivated offences. Accordingly, such arguments could not be invoked as grounds to expedite an extradition request.

48. **Mr. Yakushiji** asked whether all four criteria established in article 414 of the Criminal Code must be met in order for an offence of enforced disappearance to be deemed to have been committed. He was particularly interested to know whether the acts concerned must in all cases result in "serious consequences", as stated in the third subparagraph of that article, and what criteria were used to determine the existence of "serious consequences".

49. Acting upon the orders of a superior officer should not, in his opinion, be accepted as a mitigating circumstance for a criminal offence and he would appreciate the delegation's confirmation that the State party adhered to that interpretation. He would likewise appreciate confirmation that the death penalty was not applicable to offences of enforced disappearance. Since the State party had indicated that double criminality was a prerequisite for extradition, an explanation as to how the authorities applied that principle when enforced disappearance had not been criminalized as a separate, autonomous offence would also be welcome.

50. Noting that the State party had also indicated that international treaties were directly applicable except in cases where the promulgation of a new law was necessary to allow their application, he asked which State body decided whether a new law was necessary and on what basis such decisions were made. Confirmation as to the direct applicability of the Convention and its status in domestic law would be useful in that connection.

51. **Mr. Hazan** said that, according to reports received by the Committee, members of the security forces appeared to be involved in trafficking in human beings. He therefore wondered whether trafficking might at times meet the criteria for enforced disappearance under the Convention. Referring to article 8 of the Criminal Code, whereby Kazakh citizens who committed an offence in the territory of another State were not liable to extradition to that State unless otherwise stipulated in an international treaty, he asked whether the Convention was regarded as one of the international treaties that allowed extradition under those circumstances.

52. He would like to know whether the delegation believed that it was possible to guarantee that penalties could be commensurate with the gravity of the crime if the various elements of enforced disappearance were criminalized individually under several legislative provisions rather than in a single definition of the crime as an autonomous offence. Further,

he wondered whether it was possible under such circumstances to develop and apply appropriate prevention policies in accordance with the Convention.

53. On the question of mitigating circumstances, it would appear that for a public official such as a prison or police officer to claim that he or she was merely performing assigned duties would conflict with the prohibition on performing such actions where they contravened the law. He wondered how that conflict was resolved.

54. He would like to know whether the DNA banks included samples from families to assist in identification of victims.

55. Lastly, he asked whether persons subject to extradition proceedings had the opportunity to be heard and any means of having the proceedings suspended. If they had no lawyer, was a public defender assigned to their case?

56. **Mr. López Ortega** suggested that the State party should reconsider its position on the definition of enforced disappearance as an autonomous crime. One important consequence of doing so would be that anyone concealing or abetting enforced disappearance would automatically become a perpetrator, rather than merely an accomplice to one of the individually defined elements of the crime. That person would then be subject to a penalty commensurate with the seriousness of the crime rather than the lesser penalty that would apply to an accomplice.

57. **Mr. Huhle** said that the United States Department of State Trafficking in Persons Report 2015 described trafficking as a major problem in Kazakhstan, with police officers having been convicted of involvement. In itself the fact of such convictions was welcome, but they could be the tip of an iceberg. He would appreciate the statistics on the cases that had been brought to the attention of the authorities. How many had been resolved? How many could be considered cases of enforced disappearance?

58. **Mr. Figallo Rivadeneyra** asked whether the Procurator General's decision on extradition could be appealed by either party; in other words, was it appealable whether it granted or denied extradition? Further, once the Supreme Court had given a ruling, was there any simple and effective means of challenging the decision if the person considered that extradition would result in a violation of his or her human rights?

59. **Mr. Aripov** (Kazakhstan), referring to the application of international treaties in Kazakhstan, said that in 2008 the Supreme Court had issued an order stating that the courts were to be guided by the norms of international law where pertinent. Accordingly, the courts took account of international treaties that had been ratified by Kazakhstan. No specific account had been taken of the Convention.

60. **Ms. Aisina** (Kazakhstan) said that the Convention had not been applied because there had been no convictions for a case of enforced disappearance. There were precedents for the application of other international treaties, such as the International Covenant on Civil and Political Rights; one regional court, in awarding damages for torture, had made explicit reference to a decision by a United Nations treaty body.

61. Extradition was determined on the basis either of a bilateral agreement or, where there was none, of international treaties, including the Convention. As to the extradition of Kazakh citizens, the principle of unavoidability of punishment was applied. There was a procedure for investigating anyone suspected of carrying out enforced disappearance in another State and for bringing the case to court. There had as yet been no cases where Kazakhstan had refused to investigate a request from another State.

62. Protection for those subject to extradition proceedings was governed by the Code of Criminal Procedure, which protected the right to meet confidentially with a lawyer, to have a lawyer present during questioning, to receive family visits at the place of detention, to

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challenge the decision on deprivation of liberty, to be heard in court and to appeal any decision within 24 hours. Foreign nationals had the right to meet with their consular officials. Those rights were explained in writing at the time of detention and the subject was required to sign as confirmation that they had been so explained.

63. **Mr. Abishev** (Kazakhstan) said that there were some 300 to 350 cases per year of trafficking in persons. In dealing with the problem, Kazakhstan observed its human rights obligations under international law, notably the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and applied the principles of prevention, provision of assistance to victims, prosecution of perpetrators and partnership with civil society and NGOs. The previous year, the Human Rights Commission had worked with the government departments concerned and the International Office for Migration to produce a handbook on the issue; the recommendations made, notably in respect of assistance to victims, were now being implemented.

64. **Mr. Kakhanov** (Kazakhstan), responding to the request for statistics on human trafficking, said that there had been 79 cases of abduction in 2015, of which 33 had gone to court, 2 had been discontinued for various reasons and the remainder were ongoing; 270 cases of unlawful deprivation of liberty had been identified, of which 79 had gone to court, 89 had been discontinued and the remainder were ongoing; and 42 cases of trafficking in persons had been identified, of which 9 had gone to court, 4 had been discontinued and the remainder were ongoing. In no case had law enforcement officials been involved.

65. **Mr. Zhakupov** (Kazakhstan) said that following orders was not a mitigating circumstance. Both the person issuing an unlawful order and anyone following that order were liable to prosecution. Aggravating circumstances were listed in article 54 of the Criminal Code and applied to all crimes defined in the Code.

66. In the matter of extradition, Kazakhstan recognized all international treaties without exception and, in accordance with article 16 of the Convention, if there were grounds for believing that a person risked enforced disappearance, the State reserved the right not to extradite. Kazakhstan therefore fulfilled its international obligations in its extradition procedures.

67. The offence of trafficking in persons might include other offences such as unlawful deprivation of liberty and abduction. Anyone held on a charge of trafficking could be charged with other separately defined offences. All admissions to places of deprivation of liberty were systematically registered and it was not possible for an individual simply to disappear from view. Any official who failed to observe the custody procedures would be prosecuted under the law.

68. The DNA bank was still being set up. Identification by genetic code was currently done by experts in special institutions. Ministry of Justice experts could also use the database in the identification of missing persons.

69. **Mr. Abishev** (Kazakhstan) said that the International Criminal Court was recognized as a highly authoritative body but as yet it took rather a long time to deal with cases. Kazakhstan needed time to assess the Court's effectiveness and the decisions it took. There would be no consideration of ratifying the Rome Statute until that assessment had been carried out.

The meeting rose at 5.55 p.m.